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2 However, following a Motion for Reconsideration by appellants, the Board decided that
3 a hearing was necessary to consider the question of whether the skirting on Hubmans' dock
4 violates KCC 25.16.120(D). This is the only issue for the hearing.

5 Present for the Board were Annette S. McGee, Presiding, Chairman Harold S
6 Zimmerman, Attorney Member Robert V. Jensen, Nancy Burnett, Mark Erickson and David
7 Wolfenbarger.

8 Appearances were.

9 Appellants George and Carolyn Hubman appeared through John L. Hendrickson,
10 Attorney at Law.

11 Respondent King county appeared through Cassandra M. Newell, Deputy Prosecuting
12 Attorney for King County

13 Court reporters Randi Hamilton and Betty J. Koharski of Gene Barker & Associates,
14 Olympia, WA, recorded the proceedings (Hamilton on November 3, 1992, and Koharski on
15 November 13, 1992.)

16 Witnesses were sworn, testimony given and exhibits admitted and examined. The
17 Board visited the site of the project, accompanied by all parties.

18 From the foregoing, the Board makes these

19 **FINDINGS OF FACT**

20 I

21 Appellants George and Carolyn Hubman own a lot approximately twelve thousand
22 (12,000) square feet, with about seventy-five (75) feet of waterfront in Woodland Cove on
23 Juanita Bay on the east shore of Lake Washington in unincorporated King County Their
24 personal residence is located on this lot.

25 The area is designated Urban Environmental in the KCSMP.

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II

The property is located in a relatively small area of the lake on the east shore of Lake Washington on a point of land that forms the cove. Though on the east side of the lake, the Hubman property, because of its unique position on Woodland Cove, faces primarily to the east.

III

The Hubmans purchased the property toward the end of 1989 and constructed a four thousand (4,000) square foot home.

There was no dock on the property at the time of purchase.

IV

A previous owner of the Hubman property obtained the required permit from King County Building and Land Development (BALD) to construct a joint use pier on the property, as part of the overall Woodland Cove neighborhood. The application or permit approval did not show dock skirting

V

The Hubmans' contractor, Waterfront Construction, built the dock in late 1990. In the process, the contractor suggested that the Hubmans add lighting, double fascia, and skirting, all of which the Hubmans agreed to. These additions were to be beneficial, as well as enhance the appearance of the dock.

VI

The dock is approximately one-hundred five (105) feet long with a "T" at the end which is approximately fifty (50) feet in length.

This "T" has plank skirting extending along the length and both ends. The planks are approximately two (2) inches by eight (8) inches wide and five (5) feet long, extending about

1
2 twenty-two (22) inches below the ordinary low water mark. There is approximately one and
3 one half (1 1/2) inch spacing between the boards.

4 Both sections of the dock are of the same piling construction. The difference is that
5 skirting has been added to the "T" section

6 VII

7 There is currently approximately two (2) feet of space between the bottom of the
8 skirting and the lake floor. The depth of the lake fluctuates in elevation.

9 VIII

10 The dock extends out from a rock bulkhead that has existed for sometime on the
11 shoreline of Woodland Cove

12 IX

13 Juanita Bay has turbulent water at times, due to strong prevailing south and southwest
14 winds which create wave action. Compounding the natural wave action is heavy boat traffic
15 on the bay

16 George Hubman testified that he thought that skirting would assist in minimizing the
17 wave force, but it isn't much help. He would like to keep it for cosmetic purposes.

18 The waves from the winds, for the most part, pass under the one-hundred (100) foot
19 approach that is not skirted.

20 X

21 On January 10, 1991, the Hubmans applied for a shoreline substantial development
22 permit for the construction of a low boat platform and installation of a boat lift. They also
23 applied for a variance to retain the skirting on the existing pier, which King County required,
24 if they wanted to keep the skirting (See Finding Fact IV)

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XI

King County approved the boat lift and low boat platform, but denied the variance request to retain the skirting. It is this denial that was originally appealed.

XII

Larry Fischer, Regional Habitat Manager for the Washington State Department of Fisheries, responsible for review of environmental applications and review of hydraulic permits for Lake Washington, testified that the appellants' property is located in a documented Sockeye salmon spawning area, and that he is concerned that the skirting is interfering with the free flow of water in the area. Fischer contends that the skirting could effect fish migration and wave action to some extent, as well as shade the area.

Also, during the early review of the variance application, Fischer recommended that gravel be placed in the area with Fisheries supervision to minimize the silt settlement on fish eggs, if the skirting was going to be retained.

XIII

The ordinance that is the subject of this hearing, KCC 25.16.120(D), was drafted by King County about 1978.

XIV

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the parties and subject matter of this appeal.
RCW 90.58.180

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II

The issue is "Does the addition of skirting to the dock below the ordinary low water mark, constitute "open-pile-construction" as required by the KCSMP?"

III

The appellants have the burden of proof to show that the skirting constitutes "open-pile-construction" as required in KCC 25.16.120(D).

IV

KCC 25.16 120(D) states:

. . . piers, moorages, floats or other such structures shall float at all times on the surface of the water or shall be of "open pile construction". . . . (emphasis added.)

The Hubmans' dock is not a floating pier, therefore, the issue of whether it is "open pile construction" arises because of the added skirting. The Shoreline Management Act and the KCSMP provide no definition for the term "open pile construction"

V

George Hubman provided testimony to the Board that he had hoped the skirting would be of value in preventing rough waves from reaching his shore. However, he admits that it is of little value for this purpose.

VI

The KCSMP does not outright permit skirting, nor does it outright prevent skirting. Therefore, King County's policies and interpretation of KCC 25.16 120(D) is entitled to be given some weight.

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VII

All local governments are required to adopt shoreline programs for regulation of uses of shorelines which are consistent with RCW 90.58.080. They are also responsible for administering the regulations.

"Open-pile" is not defined in the KCSMP or Code, and there has been no previous applications for skirting in King County. The Board concludes that the administering agency's interpretation of its own master program where there is no counter construction from the Department of Ecology is important in rendering a decision

VIII

King County interprets "open pile construction" to exclude dock skirting. The Shoreline Management Act's mandate that it be liberally construed on behalf of its purposes, supports this interpretation. One of the major purposes of the Act is to minimize changes to the natural conditions of the shoreline. The fact that the skirting may not contribute to the support of the dock and its piers has very little bearing on King County's interpretation of its own regulation. To the contrary, the Board finds that King County's position that the words "open pile construction" be given their ordinary meaning, which means a dock with pilings placed at intervals necessary to support a dock, is appropriate.

IX

The Thorndike-Barnhart Dictionary, 1970, Volume II, defines "pile," among other definitions, as a large, heavy beam or post of timber . . . , or a similar post of steel or concrete, driven or set into the earth, often under water to help support a bridge, wharf, building, etc. . . . "

"Open" has many definitions as "not shut; not closed; without prohibition or restriction; not obstructed". Whereas, the opposite to "open" according to Websters Collegiate

1 Thesaurus is "blocked, obstructed; constricted". Taking the above into consideration, the
2 Board concludes that a dock built on piling or piles and having planking attached, which
3 protrudes down into the water within two (2) feet of the lake bottom is not "open pile
4 construction". The skirting therefore violates KCC 25.16.120(D).
5

6 X

7 Moreover, the Board concludes that to interpret the skirting in this appeal to be "open
8 pile construction" would be setting a precedent for future construction within the shoreline of
9 unincorporated King County and could have adverse cumulative impacts on the County
10 shorelines.

11 XI

12 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
13 From the foregoing, the Board issues this:
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ORDER

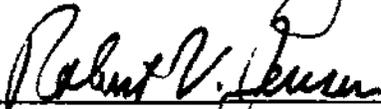
The Board hereby AFFIRMS King County's decision that the skirting violates
KCC 25.16.120(D).

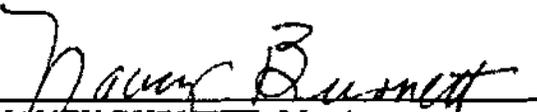
DONE this 15th day of December, 1992.

SHORELINES HEARINGS BOARD

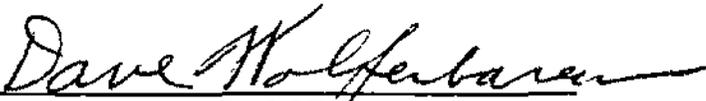

ANNETTE S. MCGEE, Presiding


HAROLD S. ZIMMERMAN, Chairman


ROBERT V JENSEN, Attorney Member


NANCY BURNETT, Member


MARK ERICKSON, Member


DAVE WOLFENBARGER, Member

S91-40F